VIRGINIA LAW REGISTER

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Justice for the Poor.

It seems to us that a great deal of time and talent have been wasted and a very useless discussion taken place over the question of the failure of the poor to obtain impartial justice in the courts. Three years, we are informed, have been given to a careful preparation of a document issued by the Carnegie Foundation, entitled "Justice and the Poor," and whilst it purports to suggest methods of curing a manifest evil we do not see that it offers a single one of any value.

It must be admitted—it cannot be denied—that the man of means obtains from the courts a degree of justice impossible to the poor. We may squirm under the lash that this statement brings down upon the back of every one of us; we may protest as much as we please; but it is true and we state confidently and yet sorrowfully that we do not believe it can be helped.

That justice is ever bought in this country we deny with all the force possible. We affirm that our courts endeavor with the strictest impartiality to do equal justice to every suitor at their bars, regardless of wealth or rank. But we must recognize the fact that justice is administered by finite beings; that its machinery is and ever must be costly and that the poor man can no more expect to have the same machinery run without money for him than he can expect to get the same luxurious food and clothing and pleasures that money alone can obtain. We are not trying to excuse this state of affairs; it is inexcusable, but we affirm impossible of remedy, although we state without fear of contradiction that well-nigh everything possible is done by our legislatures and courts to help the poor litigant.

It is no new thing—this cry for impartial justice. The unfortunate widow of the parable knew it and yet her importunity

obtained for her what would have been refused to most poor suitors. Poor old Lear echoed it.

"Plate sin with gold
And the strong lance of justice hurtless breaks;
Arm it with rags, a pigmy's straw does pierce it."

It is one of the unfortunate irretrievable calamities which grows out of man's finite nature, and neither socialism, radicalism, or any other remedy can do more than to alleviate it.

The author of the Carnegie Report is Reginald Heber Smith, of the Boston Bar, and no less a man than Elihu Root, in a preface endorses the volume.

Although Mr. Smith makes out a strong case to support his assertions that "the administration of American justice is not impartial and that the rich and the poor do not stand on an equality before the law," he takes the optimistic ground that our laws and legal institutions are sound at heart. Despite his claim that "the traditional method of providing justice has operated to close the doors of the courts to the poor and has caused a gross denial of justice in all parts of the country to millions of persons," he believes that, once the truth is known and the public conscience aroused, denial of justice on account of poverty will be eliminated for all time in America.

But we do not agree with him that public conscience when aroused will make any difference. Public conscience has been aroused. For years the attention of the legislatures has been called to this condition of affairs. All sorts of remedies have been suggested—some have certainly ameliorated the poor man's condition in the courts, especially in criminal matters.

The book is divided into three parts. The first deals with the denial of justice to the poor, said to be national in scope. The causes are found to be in delays, courts' costs, and fees charged by the State, and lawyers' fees.

The second part considers the remedial agencies which can be employed to better the position of the poor. These agencies include small claims courts with their informal procedure, domestic relations courts, and industrial accident commissions. For the great mass of cases beyond the jurisdiction of these agencies the report argues that the only solution is to supply lawyers'

services gratuitously to the poor, through public defenders in criminal cases and legal aid organizations in civil cases. In the third part these agencies are discussed in detail.

Bribery, political influence, incompetent judges, extortionate fees or class dominations are not regarded as vital factors in legal injustices; rather the great underlying social and economic changes which have taken place during the last half century, to which our judicial system has failed to adapt itself, are held responsible. Primarily, it is held, these changes are due to immigration, the rapid rise of the wage-earning class, and the startling growth of urban population.

Delays in courts are as hard upon the man of moderate means as upon the poor. Court costs, Mr. Smith ought to have known, are practically abolished in we presume every state in the Union in any case when a man chooses to sue *in forma pauperis,* and this applies as well to State fees. Lawyer's fees of course are not free—any more than groceries or clothing or coal—and yet we warrant that there are very few men who cannot obtain a lawyer's services if they have any sort of a case, especially in those states where the contingent fee is not made unprofessional or illegal, as it ought not to be.

The law requiring security for costs can always be made of no effect when one sues *in forma pauperis.*

Mr. Smith suggests as remedies:

"Small Claims Courts, Conciliation Courts and Conciliation in General, Arbitration by Courts and Other Organizations, Domestic Relations Courts, Administrative Tribunals, Administrative Officials, Assigned Counsel, Defenders in Criminal Cases, Legal Aid Organizations.

A high percentage of the difficulties of the poor falls into these groups: Claims for wages, domestic injuries, personal injuries, and small debts and claims, as for rent, groceries, loans, etc."

Of course Mr. Smith's book takes in the whole Union, but we think if he had any experience in Virginia he would find that we have the Small Claims Courts in our magisterial system, and we must admit—painful as it may seem—that more injustice is done to the poor man either in civil or criminal mat-

ters in those courts than anywhere else. The vicious system of fees, the tempting bribe of witness fees and attendance, constable's fees, etc., give rise to more injustice than anything else we know. We have known fifteen dollars costs in a two-dollar-and-a-half warrant. We have known nineteen dollars costs to be collected in a five-dollar fine case. We have known a case dismissed for want of merit and yet the costs saddled on the defendant because he was able to pay them and the other fellow wasn't. Appeal after appeal in petty criminal cases, which ought to have been dismissed by the justice, come into the circuit court, crowding its docket and inflicting costs which in the aggregate must mount up to appalling figures. Ignorance in drawing warrants, crass ignorance in the simplest matter of common sense, spite in many instances, malice in others—one need only go into an ordinary justice's court in the country to have every sense of right, propriety and justice shocked.

And yet our sapient legislators have given a jurisdiction up to three hundred dollars to men often unfit to pass upon a dog fight. The best men in a community will not take the office. Those who by strong urgency of friends sometimes do so give it up in disgust. The voters select the men who want the place for the fees in it and this "poor man's tribunal" becomes indeed a "poor tribunal."

This sad state of affairs we think only applies to the counties Our cities being able to pay better fees or salaries, have good men, as a general rule, as justices.

Courts of small claims have been tried in many cities in the effort to afford justice to suitors of moderate means. Mr. Smith seems to think they are failures. In them (we quote Mr. Smith):

"Costs are abolished. Delays in obtaining a trial are eliminated, for the judge can hold his court day or night and at any place, so that when he telephones the defendant to appear he can always fix a reasonable time for appearance within a day or two. It is sought to prevent delays through appeal by denying any appeal to the plaintiff and by making it burdensome to the defendant. The fundamental difficulty of the attorney's expense is met by the legislative fiat forbidding attorneys from

'intermeddling' in cases before these courts. This prohibition would not, of itself, be successful; the problem is really solved by the procedure of the court and the functions of the judge. The judge himself makes out the simple forms which start the case, he summons the defendant and any necessary witnesses, he is authorized to investigate the facts in any manner he chooses, and at the hearing the parties tell their own stories under the direction of the judge without regard to rules of evidence or trial procedure. It is therefore more accurate to say that these courts avoid the expense of counsel by making the presence of counsel unnecessary in their proceedings. The act further attempts to equalize the situation on appeal by providing that no pleadings shall be required in the District Court and that the defendant, if he loses, must pay $15 to the plaintiff for his attorney's fees.

"Aside from their extremely narrow jurisdictional limits, these courts are unsound in two particulars. They represent a recurrence of the old unfortunate tendency of creating new courts for new needs, which inevitably causes duplication and confusion. More serious, they indicate a renewed attempt to secure justice without trained judges and without law. Any reputable layman may be the judge, and his duty is declared to be to give his decision not according to the law but according 'to the very right of the cause.' "

The Cleveland Small Claims Court is held up as the most nearly perfect type of a court of that kind to be found in the United States. Its present course of procedure is as follows: A person goes to the Clerk of the Conciliation Branch, who has a separate office, exactly like a legal aid society, where the person may feel at home and at liberty to talk the difficulty over with the clerk. If the dispute seems one that offers fair hope of immediate adjustment, the clerk, like a legal aid society attorney, telephones or writes the defendant and endeavors to secure an amicable settlement.

If that fails, or if the case at once appears likely to demand judicial consideration, the clerk fills out in the court docket a very brief statement of claim, which the plaintiff signs. A date for the hearing—the defendant being entitled to three days' no-

tice—is at once assigned, the plaintiff being given a little card bearing the date, the time, and court room, and the court address and telephone number. A summons is made out, and delivered to the plaintiff, who deposits a copy in the mail box and certifies to that effect on the original summons. At first registered mail was used, but today ordinary mail is employed because in the event of a defective address it is returned more promptly. If the summons cannot be delivered, it is returned at once to the court and the bailiff amends his return of service. The summons states the precise time and the exact room for the hearing, and the case is tried at that time and place.

Such a court is of course possible in the cities, but what chance would there be of ever having such a tribunal in every magisterial district. We really believe that the best solution of this question in this State at least is to abolish the present system of having magistrates try any case. Let them issue warrants in civil not over $300 and in criminal cases, returnable every fortnight to some fixed place in the district. Then let a county judge be appointed at a good salary, one-half to be paid by the State and the other half paid by the districts in proportion to the number of cases tried in each district during the year; this judge to hold court at a designated point in each district every fortnight, impanelling a jury of three men—a majority to decide—to try all cases, with right to appeal only in such cases as this judge shall certify should be appealed. All misdemeanors to be tried by him with the aid of a jury of three and no appeal except in cases where the punishment is imprisonment. The fees of the magistrates for issuing the warrants to be paid on certificate of this judge that the same were issued in a proper case, and the district to pay the same out of a levy made by the board of supervisors at the end of each year.

In the long run we believe expenses would be lessened, much litigation prevented, more even and exact justice done, and the tax payers of each district would hold their magistrates responsible for frivolous and unnecessary warrants. Of course a Constitutional amendment would be necessary, but in our judgment it would be worth trying.

The Right of a Proxy to Vote Stock Purchased by Him after the Proxy Was Given, But before Transfer.

An interesting point was decided by the Supreme Court of New Jersey in a recent case. Two hundred and forty-two shares of stock stood on the books in the name of Albert Kumpfel. He had given a proxy to vote this stock at a meeting of the stockholders to Theodore Kumpfel, who purchased the stock from Albert after the proxy was given, but too late to be transferred for voting purposes. Kumpfel's stock when voted made up a majority, which would not have prevailed had the Kumpfel stock not been voted.

The right of Theodore to vote this stock on the proxy was contested on the ground that the stock had been sold by the giver of the proxy, which sale revoked the proxy, and as Theodore did not appear on the books as the owner of the stock he had no right to vote it.

The inspectors of the election declined to allow Theodore to vote the stock. In holding their action improper the Court said:

> "It is not denied that Albert appeared as owner on the books of the company on the day of the election, or that the proxy was in proper form and properly executed. On the face of the papers Theodore was entitled to vote the shares. Under the rule of Downing *v.* Potts, 23 N. J. 66, and the St. Lawrence Steamboat Co. Case, 44 N. J. Law, 529, the action of the inspectors was erroneous, and the election ought to be set aside or the contesting party put in office. The incumbents rely, not on any defect in the record title to the stock or in the proxy, but on a situation disclosed by the facts of the case as established by evidence aliunde and not legally before the inspectors of election. These facts are supposed to require the court to establish the right of the incumbents, pursuant to the injunction of section 42 of the act requiring us to give such relief in the premises as right and justice may require.
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> "The facts are that Albert gave the proxy to Theodore on March 24th; that afterwards, on April 5th, Theodore determined to buy the stock at Albert's request and sent Albert a check for the purchase price. Albert signed a transfer, but Theodore did not register the transfer on the books

of the company, and the stock still stood in Albert's name on May 13th, the day of the election. His reason seems to have been that there was a real or supposed right of pre-emption in the company, and he desired to avoid any question as to his title to the stock. It is now argued that the proxy was revoked by the sale to Theodore. Stock is often sold while the transfer books are closed, and it would be a manifest injustice to deprive the vendee of the right to vote, which the act is at some pains to secure him, because he has bought within 20 days next preceding the election. Section 36 secures each stockholder the right to vote; it does not disfranchise stock which has been sold within 20 days next preceding the election, but only stock which has been transferred on the books. Whether the vendee shall be disfranchised is thus made to depend on his own action or inaction. There is nothing in the language to prevent the vendee, by agreement with the vendor from securing his right to vote by means of a proxy, although not yet registered as a stockholder. The law was long ago established in New York under similar legislation (People *v.* Tibbets, 4 Cow. [N. Y.] 358), and has more recently been followed in Re Argus Co., 138 N. Y. 557, 579, 34 N. E. 388. This rule is in harmony with the principle that requires a trustee in case of a dry trust to give a proxy. American National Bank *v.* Oriental Mills, 17 R. I. 551, 23 Atl. 795. Granting that the sale is a technical revocation of a proxy it would be idle to require the former owner, now become a trustee of a dry trust for the unregistered vendee, to execute a new proxy, where both he and his vendee are content with the control of the voting power given by the title shown on the transfer books accompanied by the proxy. The rule is also in harmony with the policy that entitles every stockholder to the benefit of the vote of every other stockholder and intrusts the voting power to the beneficial owner. A distinction is made by the statute as Justice Depue pointed out in the St. Lawrence Steamboat Co. Case, between the qualification for voting at the stockholders' meeting, registration on the transfer books only, and the qualification of director, bona fide ownership of stock. A man may vote although not a bona fide owner of stock, and may vote by proxy. We see no reason why a vendor who is still registered as a stockholder cannot vote by proxy. The case is still stronger where the proxy is held by the vendee." Thompson *v.* Blaisdell, 107 Atl. 401.

Right of a Corporation under Any Condition to Dispose of Its Entire Assets Without the Unanimous Consent of the Stockholders.

An esteemed friend and subscriber has requested our opinion as to whether Sub-section 5 of Section 1105D, as amended by the Acts of the General Assembly of 1916, page 49, Pollard's 1916 Supplement to the Code, page 283, has authorized a corporation *under any conditions* to dispose of its entire assets without the unanimous consent of the stockholders. We do not think there is the slightest question that no corporation under MOST CONDITIONS would have a right either under this statute or under the Common Law, to dispose of its entire assets without the unanimous consent of its stockholders; but we do not think there can be any question that in order to promote or advance the necessary objects and purposes of the corporation, or for the purpose of re-investing in other property, real or personal, to be devoted to its objects and purposes, a corporation under this section of the statute would have authority to sell and dispose of its entire assets without the unanimous consent of the stockholders, if they proceeded in accordance with the said section in regard to the real estate; and a corporation would clearly have a right to dispose of its entire assets for the purpose of dissolution.

It has been well settled that a dissenting stockholder may prevent the sale by the directors or by a majority of the stockholders of corporate property which is essential to the continuance of the business of the corporation, unless such sale is made with a view to the dissolution of the corporation or the payment of corporate debts. Abbot *vs.* American Hard Rubber Company, 33 Barb. 578; but Cook in his valuable work on Stockholders lays down the law that even where dissolution is the purpose in view, yet if the corporation is a prosperous one, it is extremely doubtful whether such a sale can be made. If the purpose of such dissolution is not the *bona fide* discontinuance of the business, but is the continuance of that business by a new corporation, then the better and later rule is that the dissenting stockholder may prevent the sale, even though it is

made with a view to dissolution of the corporation. Cook on *Stock and Stockholders,* Section 667.

We therefore repeat that in our judgment a majority of the stockholders can sell and dispose of the entire assets of the corporation only to promote or advance the necessary objects and purposes of the corporation, or for the purpose of investing in other property real or personal, to be devoted to its objects and purposes, but not otherwise, except by the consent of all of the stockholders.

Descents and Distributions—Rights of a Widow Where There Are No Issue Either By Her or Any Other Marriage, But a Child Has Been Legally Adopted.

Under the 4th paragraph of Section 2557, Pollard's Code of 1904, it is provided:

"If an intestate leave a widow but no issue by her the widow shall be entitled absolutely to such of the personal property in the said surplus as shall have been acquired by the intestate in virtue of his marriage with her prior to the 4th day of April, 1877, and remain in kind at his death. She shall also be entitled, if the intestate leave issue by a former marriage, to one-third, and if no such issue, to one-half of the residue of such surplus."

It will be noted that this statute uses the language "issue." Under Section 2614A of the same Code provision is made for the adoption of a child under certain conditions; and under paragraph 2 of said section it is provided that when the provisions of the statute are complied with and the court is satisfied, etc., the court shall make an order that from that date such child is to all legal intents and purposes the child of the petitioner. And Paragraph 3 provides:

> "Such child shall be to all intents and purposes the child and heir at law of the person so adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock."

Now, a man is married to a woman, never having been previously married, and dies intestate, without issue by his wife, but having a legally adopted child. What are the widow's rights in the premises? Is she entitled to one-half or one-third of the personal property? The matter would be perfectly plain if the statute had not used the words "leaving issue." And can the rights of the widow under this statute be changed by the statute, giving the adopted child all the rights of a natural child? Or is the adopted child to count as "issue?" It seems to us that this was, and ought to be, the intention of the law, but, as is so often the case, the Legislature passed the adoption statute having no reference whatever to the Statute of Descents and Distributions and to the peculiar language of the section giving the widow rights in the personal property. The question is one that certainly ought to be decided or the act amended.

Apportionment of Taxes.

We find that there is no fixed rule, certainly among the bar of one of the cities of this Commonwealth, as to the apportionment of taxes as between vendor and vendee of real estate. In other words, a tract of land is sold and conveyed on the 1st day of October, 1919, we will say. Who pays the taxes for the year 1919? The old rule of court in one of the largest circuits under the old constitution was that the person in possession of the property on the 1st day of February should pay the taxes for that year, even though the sale and conveyance was made on the 2nd day of February. Some lawyers adopt the rule that the taxes should be apportioned commencing the tax year in January, contending that the taxable year is an entirety from January 1st to December 31st, and therefore the man getting the conveyance in October should only be required to pay two months taxes, and the vendor to pay nine months taxes. Others have contended that a taxable year should commence in February, the date of the assessment; while others insist that taxes being payable on the 1st day of December, the taxable year should run from December to December, and it seems to us that the logical argument is in favor

of the last proposition. In other words, if a man pay the taxes on his real estate on the 30th day of November, certainly on the 1st day of January he will owe two months taxes, and thence along until the 1st day of October.

We would be exceedingly obliged if the members of the legal profession who read this article would do the editor the kindness to communicate with him as to the rule in their respective counties. There should certainly be a uniform rule over the State, and our next Legislature's attention might be directed to this question. Of course this only applies to where there is no agreement between the vendor and vendee as to the taxes.